

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

<u>IN THE MATTER OF:</u>)	
)	
Midroc Operating Company)	CONSENT ORDER NO. 09-____-CAP
Cedar Creek, Area No. 1)	
Castleberry, Conecuh County, Alabama)	
<u>Air Facility ID No. 103-0011</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Midroc Operating Company (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates an existing gas production, treatment, and processing plant (hereinafter, “the Facility”) under Major Source Operating Permit No. 103-0011 (hereinafter, “the Permit”) located off of Benefield Road near Castleberry, Conecuh County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee operates a gas sweetening unit, comprised of an Amine Treating Unit and an Acid Gas Flare, at the Facility.

5. Proviso 1(a)(1)(i) of the Compliance and Performance Test Methods and Procedures section of the Facility and Emergency Well Flares subpart of the Permit requires daily sampling of the hydrogen sulfide content of the process gas stream that can be sent to the Acid Gas Flare.

6. General Proviso 21(a) and Proviso 2(b)(2) of the Recordkeeping and Reporting section of the Facility and Emergency Well Flares subpart of the Permit requires a semi-annual deviation report to be submitted to the Department. A deviation includes any incident of missed daily hydrogen sulfide monitoring.

7. On July 30, 2008, the Permittee submitted to the Department a semi-annual Title V deviation report for the period of January 1, 2008, through June 30, 2008, certifying that there were no deviations.

8. On January 28, 2009, the Permittee submitted to the Department a semi-annual Title V deviation report declaring 168 days of missed hydrogen sulfide monitoring.

9. On February 10, 2009, the Permittee submitted to the Department an addendum to the January 28, 2009, semi-annual report showing that only sixteen days of monitoring had been performed for the period of January 1, 2008, through December 31, 2008.

10. Permittee missed 334 days of daily hydrogen sulfide monitoring for the period of January 1, 2008, through December 31, 2008, for a total of 334 deviations and incorrectly certified that there were no deviations for the period of January 1, 2008, through June 30, 2008.

11. General Proviso 21(b) of the Permit requires deviations to be reported to the Department within forty-eight hours or two working days from the occurrence; 334 deviations were not reported as required by the Permit.

12. On March 2, 2009, the Permittee submitted its initial Annual Compliance Certification (ACC) to the Department and incorrectly marked it as being “in compliance” with General Permit Proviso 21(b).

13. On March 20, 2009, the Permittee was issued a Notice of Violation (NOV) for the alleged violations cited above.

14. On March 31, 2009, the Permittee submitted to the Department a formal response to the NOV.

15. The Permittee has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein.

16. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

17. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of

such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS: The Department is not aware of any evidence that the incidents of missed daily monitoring, missed reporting, and ACC errors resulted in any irreparable harm to the environment.

B. THE STANDARD OF CARE: By failing to ensure that appropriate monitoring was conducted, deviations were reported in a timely fashion, and that the ACC and semi-annual Title V report were correct, the Permittee did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee derived some economic benefit from the missed daily monitoring, since the Permittee did not have to pay for sampling and analyses. The Department is not aware of any evidence that the Permittee derived any significant economic benefit from its non-compliance and delayed compliance from the reporting violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee performed bi-weekly monitoring showing that the hydrogen sulfide content of the gas was low and fairly constant. The Permittee implemented a daily monitoring schedule immediately upon discovery of the violation.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued the Permittee a Consent Order on May 3, 2006, for Recordkeeping and Reporting violations, Flare Visible Emissions violations, and permitting violations. The Department issued NOV's to the Permittee on October 21, 2005, and August 10, 2005, which were addressed by the May 3, 2006 Consent Order.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$12,000 in settlement of the violations alleged herein within forty-five days from the effective

date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Consent Order and continuing every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and factual circumstances, which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained

herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may

be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

L. The Department and the Permittee agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an

existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MIDROC OPERATING COMPANY

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

(Printed Name)

(Date)

(Printed Title)

Date Signed:_____

Date Executed:_____